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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JOHN MONTUE,

11 Petitioner,

No. CIV S-98-1580 LKK JFM P

12 vs.

13 G. A. MUELLER, et al.,

14 Respondents.

ORDER

15 \_\_\_\_\_/  
16 Petitioner is a state prisoner proceeding pro se with an application for a writ of  
17 habeas corpus pursuant to 28 U.S.C. § 2254. Judgment was entered in this action on March 16,  
18 2001, and the judgment was affirmed on appeal on November 4, 2002. On December 9, 2004,  
19 petitioner filed a motion pursuant to Fed. R. Civ. P. 60(b) for relief from the judgment entered  
20 this action, and on February 1, 2005, he filed an amended Rule 60(b) motion. On August 24,  
21 2005, this court adopted in full findings and recommendations by the magistrate judge, construed  
22 petitioner's Rule 60(b) motion as a second or successive habeas corpus petition, and denied the  
23 motion on the ground that the United States Court of Appeals for the Ninth Circuit had denied  
24 petitioner leave to proceed with a second or successive petition.

25 On September 2, 2005, petitioner filed a motion for reconsideration of the August  
26 24, 2005 order, together with a proposed habeas corpus petition now styled as a petition pursuant

1 to 28 U.S.C. § 2241. Petitioner contends that the court of appeals has given him authorization to  
2 present his challenges in a § 2241 petition and that the rules governing second or successive  
3 petitions to not apply to petitions brought under that section.

4 For the reasons set forth in the magistrate judge's July 8, 2005 findings and  
5 recommendations, which have been adopted in full by this court, petitioner may not proceed with  
6 this second or successive challenge to the California Board of Prison Terms' 1997 decision to  
7 deny him parole, whether that challenge is presented as a Rule 60(b) motion, a second or  
8 successive petition pursuant to 28 U.S.C. § 2254, or a petition pursuant to 28 U.S.C. § 2241.  
9 (See Findings and Recommendations, filed July 8, 2005, at 2-3 & n.4.)

10 Accordingly, IT IS HEREBY ORDERED that petitioner's September 2, 2005  
11 motion for reconsideration is denied.

12 DATED: September 20, 2005.

13  
14 /s/Lawrence K. Karlton  
15 LAWRENCE K. KARLTON  
16 SENIOR JUDGE  
UNITED STATES DISTRICT COURT

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